

FILED IN
STATE OF INDIANA CLERK'S OFFICE IN THE LAKE SUPERIOR COURT
COUNTY OF LAKE 2006 JUL 21 AM 10 11 CAUSE NO. 450100607PL00096

THOMAS R. PHILPOT
CLERK LAKE SUPERIOR COURT
STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
DAVID REUBEN SROGE, individually)
and doing business as CLARITY POOLS)
AND SPAS,)
)
Defendant.)

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, petitions the Court pursuant to the Indiana Home Improvement Contracts Act, Indiana Code § 24-5-11-1 *et seq.* and the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.
2. The Defendant, David Reuben Sroge, individually and doing business as Clarity Pools and Spas, at all times relevant to this complaint was an individual engaged in business as a

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home improvement contractor in Lake County, with a residential address of 7847 Frederick Avenue, Munster, Indiana 46321-1155.

FACTS

3. At least since 2002, Defendant has entered into home improvement contracts with Indiana consumers.

4. On or about July 20, 2004, Defendant entered into a contract with Daniel Benko ("Benko") of Highland, Indiana, wherein the Defendant represented that he would construct and install an in-ground pool at Benko's residence for Forty-Three Thousand Three Hundred Ninety-Nine Dollars and Twenty-Five Cents (\$43,399.25). A true and correct copy of Defendant's July 20, 2004 contract with Benko is attached and incorporated by reference as Exhibit "A."

5. Defendant failed to include the following information in the July 20, 2004 contract with Benko:

- a. The name and telephone number of any agent to whom consumer problems and inquiries can be directed, as required by Ind. Code § 24-5-11-10(a)(2);
- b. any time limitation on the consumer's acceptance of the home improvement contract, as required by Ind. Code § 24-5-11-10(a)(3);
- c. the approximate starting and completion dates of the home improvements, as required by Ind. Code § 24-5-11-10(a)(6); and
- d. legibly printed or typed versions of the supplier's name, the supplier's agent's name, or the consumer's name, placed directly after or before the signature lines, as required by Ind. Code § 24-5-11-10(a)(9).

6. Benko made payments to Defendant totaling Thirty-Two Thousand Three Hundred Twenty-Five Dollars and Sixty-Four Cents (\$32,325.64) pursuant to the contract referred to in paragraph four (4).

7. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation that he would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

8. Defendant failed to complete construction and installation of the pool under the contract referred to in paragraph four (4).

9. On or about July 24, 2004, Defendant entered into a contract with Jose Enriquez ("Enriquez") of Schererville, Indiana, wherein the Defendant represented that he would construct and install an in-ground pool at Enriquez's residence for Twenty-Five Thousand Three Hundred Twenty Dollars (\$25,320.00). A true and correct copy of Defendant's July 24, 2004 contract with Enriquez is attached and incorporated by reference as Exhibit "B."

10. The Defendant failed to include the following information in the July 24, 2004 contract with Enriquez:

- a. The name and address of the home improvement supplier and the name and telephone number of any agent to whom consumer problems and inquiries can be directed, as required by Ind. Code § 24-5-11-10(a)(2);
- b. the date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract, as required by Ind. Code § 24-5-11-10(a)(3);
- c. the approximate starting and completion dates of the home improvements, as required by Ind. Code § 24-5-11-10(a)(6); and

d. legibly printed or typed versions of the supplier's name, the supplier's agent's name, or the consumer's name, placed directly after or before the signature lines, as required by Ind. Code § 24-5-11-10(a)(9).

11. Enriquez made payments to Defendant totaling Fifteen Thousand One Hundred Five Dollars (\$15,105.00) pursuant to the contract referred to in paragraph nine (9).

12. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of contract formation that he would complete the job, pursuant to the terms of the contract, within a reasonable period of time.

13. Defendant failed to complete construction and installation of the in-ground pool under the contract referred to in paragraph nine (9).

14. The Defendant failed to obtain the necessary contractor's license from the City of Schererville prior to entering into the contract referred to in paragraph nine (9).

15. The Defendant failed to obtain the necessary permit required by the City of Schererville for the construction and installation of a swimming pool prior to commencing work under the contract referred to in paragraph nine (9).

COUNT I: VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

16. The services described in paragraphs four (4) and nine (9) are "home improvements" as defined by Ind. Code § 24-5-11-3.

17. The agreements described in paragraphs four (4) and nine (9) are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

18. The Defendant is a "home improvement supplier" as defined by Ind. Code § 24-5-11-6.

19. By failing to provide completed, written home improvement contracts to Benko and Enriquez, Defendant violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

COUNT II: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

20. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through nineteen (19), above.

21. The transactions referred to in paragraphs four (4) and nine (9) are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

22. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

23. The violations of the Indiana Home Improvement Contracts Act referred to in paragraph nineteen (19) constitute deceptive acts pursuant to Ind. Code § 24-5-11-14.

24. The Defendant’s representations to Benko and Enriquez that the consumer transactions would be completed within a reasonable time, according to the course of dealing or the usage of trade, when he knew or should reasonably have known that they would not be so completed, are violations of Ind. Code §24-5-0.5-3(a)(10).

25. By soliciting Enriquez to engage in a consumer transaction without a license required by law, the Defendant violated Ind. Code § 24-5-0.5-10(a)(1)(A).

26. By engaging in a consumer transaction with Enriquez to construct and install a swimming pool with a permit required by law, the Defendant violated Ind. Code § 24-5-0.5-10(a)(1)(C).

COUNT III: KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE
CONSUMER SALES ACT

27. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-six (26), above.

28. The misrepresentations and deceptive acts set forth above were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, permanently enjoining the Defendant from the following:

- a. In the course of entering into home improvement transactions, failing to provide a completed home improvement contract, including each of the provisions required by Ind. Code § 24-5-11-10(a), to the consumer before it is signed by the consumer;
- b. representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- c. representing expressly or by implication that the Defendant is able to start or complete a home improvement or consumer transaction within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know that he cannot;

- d. soliciting to engage in a consumer transaction without a permit or other license required by law;
- e. engaging in a consumer transaction without a permit or other license required by law;
- f. violating any provision of the Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, or the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

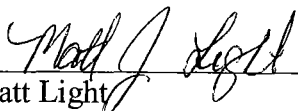
- a. cancellation of the Defendant's unlawful contracts with consumers, including but not limited to Daniel Benko and Antonio Enriquez, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- d. on Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

- e. restitution on behalf of Daniel Benko in the amount of Thirty-Two Thousand Three Hundred Twenty-Five Dollars and Sixty-Four Cents (\$32,325.64), pursuant to Ind. Code § 24-5-0.5-4(c);
- f. restitution on behalf of Antonio Enriquez in the amount of Fifteen Thousand One Hundred Five Dollars (\$15,105.00), pursuant to Ind. Code § 24-5-0.5-4(c); and
- g. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
INDIANA ATTORNEY GENERAL
Attorney no. 4150-64

By:


Matt Light
Deputy Attorney General
Attorney No. 25680-53

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Clarity Pools & Spas

1233 U.S. 41 • Schererville
322.5737
hydrospos.com

Name: Benko, Dan, Debbie
Address:

Date: 07/19/04
Time: 10:50am

Phone:

Proposal

It is the proposal of Clarity Pools and Spas to supply materials and labor for the following project: Construction of one 16(sixteen) x 32(thirty-two) x 8(eight) in-ground pool.

The project, as specified, will include:

Design, layout, stack out pool. 1(one) ft radius corners. The digging/excavation and forming of the pool. Large cement fillings, backfilling of wall. All required flex/hard PVC lines. Lifetime wall system warranty. Polymer walls brace system. Built-in arched ladder. 8(eight) ft steps arched. Main drain, skimmer, large mouth. 4 (four) comm. Grade returns. 4(four) x 4(four) cement decking w/ 6(six) ft. ends. Setting all forms/wire grading. Custom set and stamp of cement, 100(one hundred) sq. ft as well as additional cement decking. Custom 20(twenty) year liner, pattern of the customer's selection. Complete built-in auto-cover, non-mesh with 10 yr warranty. All SST rails/SAM/LT. Pentair heater, dig. filter, whisper flow pump. 1(one) AquaBot Turbo Cleaner. (You will find these products and services outlined in your customer invoice from Clarity Pools and Spas.)

Total cost of the project is estimated at:

\$43,399.25

- Dates Scheduled for beginning and terminus of the specified project are subject to postponement on the part of Clarity Pools and Spas due to severe or otherwise adverse weather conditions.
- Clarity Pools and Spas will not be held liable for damage existing prior to the date of estimate, nor will Clarity Pools and Spas be responsible for any previous errors which may have contributed to existing conditions.
- Overages on labor charges will be 50(fifty) dollars per man, per hour, plus materials, should they occur. Customer will be notified of additional costs or charges before any additional work is initiated. Customer signature is required to approve all necessary work before it will commence.
- Clarity Pools and Spas will issue **no cash refunds** on special orders.
- Clarity Pools and Spas will issue **no cash refunds** on layaways.



The above agreement with Clarity Pools and Spas replaces any other existing contracts held regarding construction of the specified 16(sixteen) x 32(thirty-two) x 8(eight) in-ground pool.

The customer agrees to furnish 50% (fifty) of the amount of the above estimate prior to the beginning of the project. This deposit is non-refundable should the customer for any reason willingly choose to terminate the project once it has begun. The customer also agrees to furnish the *remainder* of the balance in the following manner:

1/3(one-third) upon excavation.

1/3 (one-third) upon installation of the liner.

1/3 (one-third) upon completion of the project.

Separate quotes and contracts will be issued for the following proposals:

Installation of waterfall structure with plumbing.

Inclusion of Fiber Optic lighting w/projector.

This contract is binding and cannot be altered once signed.

Customer Signature _____

Date _____

Clarity Pools and Spas Agent _____

Date 7/20/04 _____

Mark White, VP

Comments:

✓ ON ADD - LADDER (BUILT IN)

The above contract is binding and cannot be altered once signed.

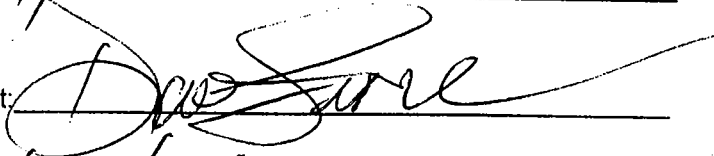
Customer Signature:



Date:

7/24/04

Clarity Pools and Spas Agent:



Date:

7/24/04